

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-12204-RWZ

YODERNY PENA

v.

THOMAS DICKHAUT

ORDER

November 22, 2010

ZOBEL, D.J.

Yoderny Pena was convicted of murder in the first degree in the Suffolk County Superior Court and sentenced to imprisonment for life. His direct appeal and his appeal from the denial of a motion for a new trial were consolidated and both affirmed by the Supreme Judicial Court on September 24, 2009. Thereafter, Pena proceeded along two fronts - on December 6, 2009 he filed a second motion for a new trial in the Suffolk Superior Court, and on December 21, before the trial court ruled on the new trial motion, he petitioned this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The new trial motion was quickly denied initially and on motion for reconsideration. Petitioner requested leave from a single justice of the SJC to appeal that denial, which motion was pending, when respondent in this court moved to dismiss the petition because it contained exhausted and unexhausted claims. Over respondent's objections this court granted petitioner's request for a stay, but ordered him to file periodic reports detailing the status of his quest for review by the SJC.

In full compliance with this court's order, petitioner, on November 1, 2010, reported the denial by the single justice of further review of his second motion for a new trial. He also requests the extension of the stay of proceedings here to allow him to return to the Superior Court yet again with several new theories of error. That motion is denied. The stay previously entered is now vacated and respondent is granted leave to move to dismiss the petition on the merits. Such motion and all supporting documents shall be filed on or before December 27, 2010. Petitioner may file his opposition with supporting documents no later than January 31, 2011.

November 22, 2010

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE